

NASA Glenn Research Center  
Cleveland, Ohio

August 15, 2000

TO: Glenn Employees

FROM: 0400/Chief, Office of Human Resources

SUBJECT: Changes to Leave Regulations

In the last few months the Office of Personnel Management (OPM) has revised and effected regulations pertaining to Federal leave programs. The regulations published are specifically related to the provisions and implementation of the Family and Medical Leave Act (FMLA) and the use of sick leave to care for family members with a serious health condition.

Enclosure 1 is a summary of the changes made to the Family and Medical Leave Act (FMLA) implementing regulations for Federal employees. Enclosure 2 is a summary of the changes made to the sick leave regulations pertaining to the use of sick leave for family care purposes.

The Center has also recently modified some leave program authorities in order to simplify our internal leave processes. In Personnel Policy Statement OHR-13 some delegations of authority regarding the leave programs have been re-delegated down to first-line supervisors. As a result, the following leave requests may be approved by the first-line supervisor and do NOT need to be sent to the Office of Human Resources for approval:

- Leave Without Pay Requests (LWOP) for 60 up to workdays
- Any LWOP request under the FMLA
- Excused absences for 1 hour or less
- Excused absences for off-site blood donation
- Excused absences for bone marrow and organ donation
- Military leave requests

Please note that an SF-52 must still be completed and forwarded to OHR for processing if LWOP will be for more than 80 hours. I encourage you to review OHR-13 for the specific provisions of all the delegations of authority. It can be found on the OHR Web site at <http://www.grc.nasa.gov/WWW/OHR/Ohr-13.pdf>

If you have questions pertaining to the changes to the regulations regarding these leave programs or would like additional information concerning leave, please contact Lori Pietravoia of the Program and Policy Office at extension 3-2506 or Carol Mehallick of the Operations Office at 3-2505.

Maury L. Blanton

2 Enclosures

Copy Distribution:  
List A-2

### **Summary of Modifications to Family and Medical Leave Act (FMLA) Regulations**

The Family and Medical Leave Act (FMLA) regulations have been revised to address the questions and concerns that continue to be received by the Office of Personnel Management (OPM) concerning FMLA entitlements. The modifications made to the regulations are an attempt by OPM to assure that the FMLA provisions reflect Congress' intent to "provide Federal employees with an entitlement to FMLA leave in a fair and equitable manner while minimizing the impact of such leave on an employing agency." Some of the new provisions are clarifications of interpretations of law and regulations. The final regulations, which can be found at <http://www.opm.gov/oca/leave/HTML/FMLACHNG.PDF>, were published on May 8, 2000, and became effective on June 7, 2000.

A summary of the changes made to the regulations are as follows:

1. An employee may retroactively invoke entitlement to family/medical leave only if:
  - a. he/she or a personal representative is physically or mentally incapable of invoking the entitlement during the entire period of absence;
  - b. the employee can provide a written medical certification from a health care provider explaining why the employee was incapacitated from contacting the Center and invoking entitlement and acceptable documentation that explains the inability of the personal representative to contact the Center on the employee's behalf to invoke entitlement; and
  - c. the employee invokes entitlement within 2 workdays after returning to work.
2. Employees must provide medical certification of a serious health condition no later than 15 calendar days after the date an agency requests the medical certification. Despite an employee's diligent, good faith efforts, if it is not practicable under the particular circumstances to provide medical certification within 15 calendar days, employees must provide the certification within a reasonable period not to exceed 30 calendar days from the request. The Center encourages employees to submit any supporting medical certification documentation with the FMLA leave request to expedite the processing. The Department of Labor has established a certification form that may be used by employees to obtain the certification from their health care provider. The form can be found at <http://www.dol.gov/dol/esa/public/regs/compliance/whd/fmla/wh380.pdf>. All medical certifications do not have to be submitted on this form. However, the information requested on the form is the same information that is required in regulation (5 CFR 630.1207) and must be included with any medical certification submitted.
3. If an employee does not comply with the notification requirements and does not provide medical certification in accordance with OPM regulations, the employee is not entitled to FMLA leave nor any of the employment and benefit protections of the FMLA. In addition, the Agency may charge the employee absence without leave (AWOL) or allow the employee to request annual leave, sick leave or leave, without pay in accordance with established procedures to cover the period of absence.

4. FMLA leave may be charged only on days on which an employee is scheduled to be in a duty status. Holidays set by statute, or authorized by other authorities will not be counted toward the 12-week entitlement to FMLA leave.
5. Clarification was provided regarding the following issues (these are not included in the regulations but are highlighted in the supplemental information in the Federal Register):
  - a. Employees may use other available leave, if requested and approved in accordance with established procedures, in addition to the 12-week entitlement under the FMLA for a particular event.
  - b. A supervisor generally cannot deny a request to use accrued sick leave that is medically documented, even if it is not requested under FMLA. However, based on a need to have the employee at work, a supervisor may deny the use of annual leave and leave without pay if not requested under the entitlement to FMLA.
  - c. It is appropriate for supervisors to inquire if an employee is invoking his/her entitlement to FMLA leave if the employee is requesting leave for any of the four FMLA qualifying purposes.
  - d. Employees may substitute available paid annual and sick leave for the leave without pay under FMLA as provided for in OPM regulations.
  - e. The term "days" has been defined as "calendar days."

### **Summary of Changes for Sick Leave Regulations**

The Office of Personnel Management (OPM) revised their sick leave regulations by expanding the use of sick leave for family care purposes. The modified regulations were published on June 13, 2000, and became effective June 20, 2000. These revised regulations can be found at <http://www.opm.gov/fedregis/index.htm>.

A summary of the changes to these regulations are as follows:

1. An employee may use sick leave to attend to a family member who is receiving medical, dental or optical examination or treatment or to provide for a family member with a serious health condition.
2. Full-time employees who are caring for a family member with a serious health condition may use up to 12 weeks of sick leave as long as an 80 hour sick leave balance is maintained.
3. No changes have been made to the regulations regarding the limitations placed on employees caring for family members not suffering from a serious health condition. In such cases, a full-time employee may use up to 40 hours (5 work-days) of accrued or advanced sick leave in a leave year to care for a family member who is incapacitated. If employees can maintain a balance of 80 hours, they may use up to 104 hours of sick leave in a leave year to care for a family member who is incapacitated.
4. Any time used to care for a family member without a serious health condition in a leave year must be subtracted from the 12 weeks of sick leave allowed to care for a family member with a serious health condition.
5. Serious health condition is the same definition used for the FMLA found at 5 CFR 630.1202. Examples of serious health condition includes cancer, heart attack, stroke, or serious injury. It does not include common acute illnesses such as a cold, flu, ear infections, etc.

### **Summary of Changes for Sick Leave Regulations**

6. The definition of family member is the same as currently used for family care/bereavement purposes and for the voluntary leave transfer program found at 5 CFR 630.201 and 630.902.
7. Childbirth and recovery are considered serious health conditions. Therefore, a full-time employee may use up to 480 hours of sick leave to care for a family member for childbirth and recovery (i.e., the time the family member is incapacitated as supported by a medical certificate). A full-time employee, however, is not permitted to use up to 480 hours of sick leave for routine childcare, to care for children with minor childhood ailments, or to care for a healthy newborn.

8. An employee taking sick leave to care for a family member is still subject to the established leave requesting procedures. Normally, if the period of absence is for more than 3 consecutive workdays, a medical certificate should be submitted. A medical certificate for a period of sick leave in excess of 3 consecutive workdays to care for a family member with a serious health condition should include a statement from the health care provider that the family member requires psychological comfort and/or physical care, the family member would benefit from the employee's care or presence, and the employee is needed to care for the family member for a specified period of time. The modified regulations also state that if there is a question as to whether the condition the family member is suffering from meets the definition of "serious health condition," documentation may be required that specifies that the family member has a qualifying medical condition before granting the sick leave.

### **Summary of Changes for Sick Leave Regulations**

9. Before using donated annual leave to care for a family member, the employee must exhaust sick leave available for family care, in addition to annual leave. (In some cases, the employee may have accrued sick leave, but have exhausted the amount he/she may use to care for a family member, or lack the 80-hour balance to exceed the minimum 1-week amount.)

Below is a table that summarizes the entitlements to use sick leave for family care:

Up to 40 hours per leave year (or the average number of hours in a workweek if PT or on an uncommon tour).	Any employee covered by leave program. Care for incapacitated family member or for bereavement (see 5 CFR 630.401(a)(3&4). May use advanced sick leave.
Up to 13 days/104 hours total per leave year (including the above amount; pro-rated for PT. Limit is amount of SL employee would accrue in a leave year).	Employee must maintain 80-hour SL balance (pro-rated for PT or on uncommon tour). Care for incapacitated family member. No advanced SL after 40 hours.
Up to 12 weeks/480 hours total per leave year (including the above amount; pro-rated for PT or uncommon tour).	Employee must maintain 80-hour SL balance, as above. Care for seriously ill family member. No advanced SL after 40 hours.

OPM has prepared a list of questions and answers on the expanded use of sick leave for family care purposes. You may access this list at <http://www.opm.gov/oca/leave/HTML/sIQ&A.HTM>